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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/683,546

10/10/2003

Roger Proksch

14083-004002

2640

74162

7590

03/03/2011

Law Office of Scott C Harris Inc

PO Box 1389

Rancho Santa Fe, CA 92067

EXAMINER

LARKIN, DANIEL SEAN

ART UNIT

PAPER NUMBER

2856

NOTIFICATION DATE

DELIVERY MODE

03/03/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary****Application No.**

10/683,546

**Applicant(s)**

PROKSCH, ROGER

**Examiner**

DANIEL S. LARKIN

**Art Unit**

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 14-21, 27 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-21, 27 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-947)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Interference***

Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in a communication filed 17 May 2006. However, Applicant has failed to provide a detailed explanation as to why applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c). Because Applicant has not provided evidence that priority prior to 09 March 2001 or 15 May 2001 can be claimed, Applicant's request for an interference is denied at this time.

Applicant has also made accusations that the inventorship of a valid patent (U.S. Patent No. 6,612,160) is incorrect; however, Applicant has not provided any evidence to support this accusation. The Office is not permitted to comment on the validity of a patent which is presumed to be valid.

### ***Claim Objections***

Claims 1-8 and 14-21 are objected to because of the following informalities:

Re claim 1, claim line 7: The second occurrence of the phrase "and wherein" should be deleted. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Claims 1-8, 14-21, 27, and 29-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by US 6,530,268 (Massie).

Massie discloses an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims.

Claims 1-8, 14-21, 27, and 29-32 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,612,160 (Massie et al.).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Massie et al. disclose an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims.

Claim 1-8, 14-21, 27, and 29-32 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

US Patent No. 6,612,160 (Massie et al.) discloses an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims and with an effective filing date earlier than Applicant's earliest filing date.

US Patent No. 6,530,268 (Massie) also discloses an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims and with an effective filing date earlier than Applicant's earliest filing date.

Claims 1-8, 14-21, 27, and 29-32 are rejected under 35 U.S.C. 102(g) as being clearly anticipated by US 6,612,160 (Massie et al.).

Massie et al. disclose an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims.

Claims 1-8, 14-21, 27, and 29-32 are rejected under 35 U.S.C. 102(g) as being clearly anticipated by US 6,530,268 (Massie).

Massie discloses an apparatus and method for isolating and measuring movement in a metrology apparatus comprising all of the limitations of Applicant's claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL S. LARKIN whose telephone number is (571)272-2198. The examiner can normally be reached on 8:30 AM - 5:00 PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel S. Larkin/  
Primary Examiner, Art Unit 2856